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January 31, 2007

William A. Bonnet
Vice President
Government & Community Affairs

The Honorable Chairman and Members of
the Hawaii Public Utilities Commission
465 South King Street
Kekuanaoa Building, 1st Floor
Honolulu, Hawaii 96813

PUBLIC UTILITIES
COMMISSION

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Dear Commissioners:

Subject: Docket No. 03-0253
HECO Integrated Resource Planning (HECO IRP-3)

This responds to the Commission's letter dated August 9, 2006 with respect to Sections 111(d)(12), 111(d)(13) and 112(b)(3)(A) of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), as amended by the Energy Policy Act of 2005¹, regarding the requirement that the Commission commence consideration of the following matters governing fuel diversity and fossil fuel generation efficiency, by no later than August 8, 2007:

(12) FUEL SOURCES – Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

(13) FOSSIL FUEL GENERATION EFFICIENCY – Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

16 U.S.C. § 2621 (d)(12) – (13). See also 16 U.S.C. § 2622 (b)(3)(A).

In its letter, the Commission requests that HECO "provide a statement describing your position, if any, on whether the commission should adopt, modify, or decline to adopt in whole

¹ In Docket No. 94-0203, by Order No. 13387, filed July 19, 1994, the Commission instituted a proceeding to consider and determine the appropriateness of implementing the energy efficiency standards established by the Energy Policy Act of 1992 for electric utilities under PURPA Section 111. By Decision and Order No. 14454, filed January 12, 1996, the Commission concluded that it need not adopt the federal standards in order to be in compliance with Section 111 of PURPA, as amended by the Energy Policy Act of 1992.

or part, the standards articulated above, as well as procedural comments and suggestions as to how this issue should be considered in this docket or in a separate proceeding.”²

HECO’s position is that the Commission should decline to adopt in whole or part the two federal standards. In general, one size fits all federal standards are not the optimal method to achieve objectives such as energy efficiency and implementation of renewable resources. Rather, utility specific objectives that are developed and refined in periodic Integrated Resource Planning (“IRP”) processes are preferable. In this manner, a utility’s specific circumstances (such as its specific existing generation mix and opportunities to acquire renewable resources through mechanisms such as competitive bidding) and State requirements and policies (such as standards mandated in the Renewable Portfolio Standards law, policies established in H.R.S. §226-18, and goals and objectives mandated by the Commission in the IRP Framework and in proceedings such as the pending Energy Efficiency Docket) can be taken into consideration.

Moreover, the purpose underlying PURPA can be met without adopting the two standards. The stated purpose of the PURPA Title I standards, as enunciated in 1978, are to encourage (1) conservation of energy supplied by electric utilities, (2) optimal efficiency of electric utility facilities and resources, and (3) equitable rates for electric consumers. The Conference Committee Report that accompanied the passage of PURPA in 1978 explained further that the first purpose of the Title was to foster conservation by end-users of electricity. The second purpose was directed at utilities and their use of energy and their facilities, including capital resources, and intended this to include “conserving scarce energy resources by techniques of rate reform which substitute the use of more plentiful resources produced in the United States in lieu of less plentiful resources, especially those imported into this Country.” Joint Explanatory Statement of the Committee of Conference, Conference Committee Report accompanying Public Law 95-61 7 (PURPA), 1978, p. 69. Nothing further was added to the third purpose beyond what was said in the statute, that is, that it was intended to encourage equitable rates for consumers.

PURPA did not take the primary responsibility over electric utility rates from the states. The Title I standards impose certain obligations on state regulatory commissions and give certain rights to persons to go before state regulatory commissions and state courts. However, under PURPA and its amendments, states retain primary responsibility with respect to retail electric rates. PURPA and the three purposes are intended to supplement state law, but do not override state law. Conference Committee Report, pp. 70-71. Also, states may consider other purposes as

² In its August 9, 2006 letter, the Commission requested that HECO file a position statement on this matter by December 1, 2006. On December 4, 2006, HECO, on behalf of the parties (the Consumer Advocate and Life of the Land) requested an extension of time, to January 31, 2007, for the parties to file their position statements. By Order No. 23117, filed December 7, 2006, the Commission denied the parties request for an extension of time, and on its own motion established a deadline of January 31, 2007 for the parties to file their position statements.



well that are not specified by PURPA. State commissions are not required to take actions that conflict with state law. The intention was to preserve the discretion of state commissions that is provided by state law - except to the extent that Title I imposes procedural requirements, such as requirements to hold hearings and consider and make a determination. Conference Committee Report, p. 71.

The HECO utilities still engage in an IRP process, unlike many jurisdictions on the mainland. As such, there is a formal process in place where fuel diversity and renewable resources are considered. HECO maintains that its existing IRP process sufficiently addresses matters with respect to fuel diversity and fossil fuel generation efficiency. For example, analyses are conducted as part of IRP that already measure the cost-effectiveness of utilizing various fuel sources to supply electricity, and the impacts of alternative resource plans on fuel diversity. Accordingly, Commission adoption of the Energy Policy Act of 2005 fuel diversity and fossil fuel generation efficiency standards articulated above is unnecessary.

HECO's IRP-3 Plan, filed October 28, 2005, addressed in a comprehensive manner matters governing fuel diversity and fossil fuel generation efficiency. For example, Section 4, Objectives, of the IRP-3 Plan had as objective *4.6 Energy Security and Sustainable Future*, and included subparts *4.6.1, Ability to Utilize Different Types of Fuel*, *4.6.3, System Fossil Fuel Efficiency*, *4.6.5, Energy Produced by Commercially Available Indigenous and Renewable Resources*, *4.6.6, Renewable Portfolio Percentage (Oahu only)*, and *4.6.7 Fuel Oil Consumption*. These objectives were assessed in a quantitative manner, with the exception of subpart *4.6.1* which was assessed in a qualitative manner. The formulas for the quantitative assessment of these objectives were presented on page 4-15 of the IRP-3 Plan.

Further, Section 269-92 of the Hawaii Revised Statutes requires that each electric utility in the state comply with certain renewable portfolio standards by certain dates. Since there is already a state statute that addresses a specific form of fuel diversity, there is no need to adopt an additional and separate standard that attempts to address fuel diversity in a more general sense.

Moreover, HECO notes that the fuel efficiency standard cannot be applied to the fossil-fuel fired generation owned by Independent Power Producers ("IPPs"). In any event, IPPs have incentives to maintain and improve the efficiencies of their generating units, to the extent that it is cost-effective for them to do so, by virtue of the energy pricing provisions in their power purchase agreements ("PPAs"). This was recently evidenced by the mechanical efficiency upgrades implemented by Kalaeloa Partners, L.P. ("KPLP") in 2004, which had the additional benefit of allowing KPLP to provide additional firm capacity to HECO. These upgrades were incorporated in amendments to the KPLP PPA, which were approved by the Commission in Decision and Order No. 21820, filed May 13, 2005, Docket No. 04-0320.

The fuel efficiency standard also is unnecessary in the case of utility owned generation, because the fixed heat rate provision in their Energy Cost Adjustment Clauses provides the

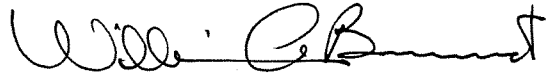


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HECO utilities with substantial incentive to maintain and improve the fuel efficiency of their generation.

If you have any questions on this matter, please contact Dean Matsuura at 543-4622.

Sincerely,



cc: Division of Consumer Advocacy
H. Q Curtis

